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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION**
12

13 ANTHONY YARBER,

14
15 Plaintiff,

16 vs.

17 FEDERAL EXPRESS
CORPORATION, a business entity;
18 and DOES 1-25, inclusive,
19 Defendants.

CASE NO.: C07-02695 CRB

STIPULATED PROTECTIVE ORDER

20 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and the stipulation
21 of the undersigned attorneys, the discovery taken by the parties in this case shall be
22 conducted subject to the following Protective Order:

23 1. Any and all documents or things or information produced or otherwise
24 furnished by any of the parties in informal or other discovery that the producing party
25 believes contains trade secrets or other confidential commercial, proprietary or
26 personal information may be designated, in good faith, "confidential" by the
27 producing party by stamping or marking on the documents or other material the term
28 "CONFIDENTIAL." Those documents or other matters shall be maintained by the

1 other parties to this action and their counsel in confidence and used only for the
2 purposes of this litigation, and shall not be communicated or used for any other
3 purpose. A party's use for any purpose of its own documents and information which
4 that party produces or discloses in this action shall not be considered a violation of
5 this Order. To the extent that any such items are filed with the Clerk of Court or with
6 the Court, they shall be placed in an envelope marked "CONFIDENTIAL
7 MATERIALS SUBJECT TO PROTECTIVE ORDER" and sealed.

8 2. Any copies, photographs, depictions, excerpts, notes concerning, or other
9 information generated from an inspection of the matters designated
10 "CONFIDENTIAL," and any motion papers, memoranda or other documents filed
11 with the Court that quote from, attach or include documents, testimony or other matter
12 designated "CONFIDENTIAL," shall be treated in the same manner as the underlying
13 documents, testimony or other matter.

14 3. Documents or other information designated as "CONFIDENTIAL" may
15 be used in connection with depositions or hearings before the Court. Deposition or
16 hearing transcripts or portions thereof which record testimony concerning confidential
17 documents or information may be marked as "CONFIDENTIAL" by any party within
18 thirty (30) days after receiving the transcript. Deposition or hearing transcripts may
19 not be made available to anyone other than counsel or the parties during the thirty (30)
20 days provided to make confidentially designations. The party wishing to make such
21 designations shall advise all other parties, and the portion(s) of the transcript
22 designated as "CONFIDENTIAL" shall thereafter be treated as subject to the terms of
23 this Order.

24 4. If, at the time of trial, any counsel intends to introduce documents or
25 information designated "CONFIDENTIAL" by any party or third party other than that
26 counsel's client(s), counsel shall so inform the Court, counsel for the other parties and,
27 if appropriate, the non-party who produced the documents or information at issue, as
28 far in advance as possible. The Court may take steps, at the request of any party or

1 non-party or on its own initiative, as it deems necessary, to preserve the
2 confidentiality of the documents or information.

3 5. Neither the parties nor their counsel shall disclose or permit the
4 disclosure of the documents or other information designated as "CONFIDENTIAL" to
5 anyone other than partners, associates, legal assistants or employees of counsel to this
6 action; the parties themselves; any expert(s) or consultants(s) retained in connection
7 with the preparation for and hearing of this proceeding; and any other person deemed
8 necessary by counsel for the purposes of litigation.

9 6. Except for the parties themselves, and their counsel (including partners,
10 associates, legal assistants or employees of their law firm), all persons other than the
11 producing party or its counsel to whom any information subject to this Protective
12 Order is disclosed shall, prior to any disclosure to them, be provided a copy of this
13 Protective Order and must execute a protective agreement in the form attached as
14 Exhibit A to this Protective Order. Copies of each such protective agreement shall be
15 furnished to counsel for all parties at the conclusion of trial or upon Order of the
16 Court. The requirement of a protective agreement prior to disclosure of documents or
17 information subject to this Protective Order shall not apply to any nonparty witness
18 shown documents designated as "CONFIDENTIAL" for the first time in a deposition.
19 The party wishing to show a non-party witness documents during a deposition which
20 have been designated as "CONFIDENTIAL" shall request that the non-party witness
21 execute a protective agreement in the form attached as Exhibit A. In the event that the
22 non-party witness refuses to execute a protective agreement, the party seeking to
23 enforce confidentiality may demand that the deposition be suspended for the time
24 necessary for that party to move pursuant to Rule 26 of the Federal Rules of Civil
25 Procedure for an order that steps be taken, if necessary, to preserve the confidentiality
26 of the documents or information.

27 7. Nothing contained in this Protective Order shall restrict or prevent any
28 party to this action from disclosing or otherwise using (a) its own documents and

1 information which that party produces or discloses in this action, or (b) any matter
2 produced or disclosed in this action not subject to this Protective Order.

3 8. If any party wishes to have any information, document or testimony
4 marked "CONFIDENTIAL" by another party reclassified as non-confidential, the
5 parties will confer and try to reach agreement. If the parties cannot reach agreement,
6 the party seeking to re-classify may seek appropriate relief from the Court, with the
7 party seeking to maintain the "CONFIDENTIAL" designation bearing the burden to
8 establish its claim of confidentiality.

9 9. Counsel may exclude from the room during a deposition, hearing or other
10 proceeding any person (other than the witness who is then testifying) who is not
11 entitled under this order to receive or review documents or information designated
12 "CONFIDENTIAL."

13 10. Upon the final conclusion of this proceeding, including any appeal, or
14 upon the settlement and or dismissal of the proceeding, all documents and things or
15 information subject to this Protective Order shall be returned to the party which
16 produced them, or shall be destroyed. Counsel for the parties may preserve work
17 product and privileged documents in their permanent files even though such
18 documents may reflect or contain confidential documents or information. The
19 conclusion of this proceeding shall not relieve any person or party from any of the
20 requirements imposed by this Protective Order.

21 11. Any non-party subpoenaed or requested to produce documents and things
22 or information, or to give deposition testimony, shall have the full benefits and
23 protections of this Protective Order, and may designate documents or deposition
24 testimony as "CONFIDENTIAL" in the manner, and subject to the same protections,
25 set forth above. However, all of Plaintiff's medical and/or mental health records
26 subpoenaed from Plaintiff's medical and/or mental health providers, and/or the third
27 party administrator(s) who handled Plaintiff's workers' compensation claims while
28 Plaintiff was employed by Defendant, shall be treated by Defendant as if they were

1 designated as confidential regardless of whether the subpoenaed provider(s) and/or
2 administrator(s) so designated the records. Accordingly, all such records are subject
3 to the protections afforded by this order regardless of whether they are marked
4 “CONFIDENTIAL.”

5 12. Nothing contained in this Protective Order, nor any action taken in
6 compliance with it, shall operate as an admission by any party or third party that any
7 particular information is or is not “CONFIDENTIAL” matter within the
8 contemplation of the law, or prejudice in any way the right of any party or third party
9 to seek a Court determination of whether or not any particular materials should be
10 disclosed or if disclosed whether or not it should be subject to the terms of this Order.

11 **13. The provisions of this Order shall not preclude any party from**
12 **seeking from the Court, for good cause shown, additional protections or**
13 **limitations on the use of certain documents or information as permitted by Rule**

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1 **26(c) of the Federal Rules of Civil Procedure. Nor shall any party be precluded**
2 **from moving the Court for relief from this Order if, in practice, the terms of the**
3 **Order are inhibiting the efficient conduct of this litigation.**

4
5 DATED: October 16, 2007 FEDERAL EXPRESS CORPORATION

6 By: /S/
7 Stacey O. Jue, Esq.
8 Attorney for Defendant Federal Express
9 Corporation

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11 DATED: October 10, 2007 LAW OFFICES OF PAUL B. JUSTI

12
13 By: /S/
14 Paul B. Justi, Esq.
15 Attorney for Plaintiff Anthony Yarber

16 IT IS SO ORDERED

17
18 Dated: _____

19
20 _____
21 THE HONORABLE CHARLES R. BREYER

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23 698554
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EXHIBIT A

PROTECTIVE AGREEMENT

I hereby acknowledge that I am being given access to “confidential” information that is the subject of a Protective Order in the case entitled Anthony Yarber v. Federal Express Corporation, Court File No. C07-02695 (CRB), pending in the United States District Court for the Northern District of California. I agree that I shall maintain “CONFIDENTIAL” documents and information in confidence and will use said documents and information for no other purpose than as provided in the Protective Order. I understand that I can be subject to sanctions for violation of this agreement. I further agree that upon the conclusion of my having any need for further access to “CONFIDENTIAL” documents and information provided to me, upon the final termination of this litigation (including appeals, if any), or upon request by the person making them available to me or Order of the Court, I shall return to the person making them available to me all such documents and information provided and all copies thereof.

Printed Name

Signature

Address:

CERTIFICATE OF SERVICE

I declare that I am employed with the Legal Department of Federal Express Corporation, whose address is 2601 Main Street, Suite 340, Irvine, California 92614.

I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on October 17, 2007, I served a copy of:

STIPULATED PROTECTIVE ORDER

- ☒ **BY U.S. MAIL [Fed. Rule Civ. Proc. rule 5(b)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at FedEx, 2601 Main Street, suite 340, Irvine, California 92614 in accordance with FedEx's ordinary business practices.

I am readily familiar with FedEx's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of FedEx's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at FedEx with postage thereon fully prepaid for collection and mailing.

- ☐ **BY ELECTRONIC SERVICE [Fed. Rule Civ. Proc. rule 5(b)(2)(a)]** by electronically mailing a true and correct copy through FedEx's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Federal Rules of Civil Procedure rule 5(b).

Paul B. Justi, Esq.
Law Offices of Paul B. Justi
18 Crow Canyon Court, Suite 160
San Ramon, CA 94583
Tel: 925-837-9677 / Fax: 925-837-0548

Attorney for Plaintiff Anthony Yarber

I declare under penalty of perjury that the foregoing is true and correct. I declare that I am employed in the office of a member of the bar of this court at whose

1 direction the service was made.

2
3 Executed at Irvine, California, this 17th day of October, 2007.

4
5
6
7 _____
8 Renee K. Aven
9 (typed)

_____ /S/
(signature)